



GRADUATE MEDICAL EDUCATION COMMITTEE POLICY NO. 32

- A. SUBJECT: Adverse Actions and Appeal Process in Graduate Medical Education
- B. EFFECTIVE DATE: February 17, 2021 (R)
- C. POLICY

The following "*Adverse Actions and Appeal Process in Graduate Medical Education Policy*" (hereinafter "GME Appeal Policy") outlines the procedures for the appeal process and shall apply to all graduate medical education trainees (GME Trainees) at the University of Virginia Health System.

Definition:

Adverse Action: Adverse actions may include suspension, non-promotion, non-renewal of appointment, summary suspension, or dismissal of a GME Trainee from his or her training program. Adverse actions are generally reportable events and appealable.

Reportable Events: Those actions the program or institution must disclose to others upon request, including, but not limited to, future employers, privileging hospitals, and licensing, specialty certification boards, and, if applicable, the Educational Commission for Foreign Medical Graduates (ECFMG).

- D. PROCEDURE

1. ADVERSE ACTIONS

A. Suspension of Clinical Activities

A GME Trainee may be suspended from clinical activities by his or her program director, department chair, the medical director of the clinical area to which the GME Trainee is assigned, the DIO, or the Chief Medical Officer. This action may be taken in any situation in which continuation of clinical activities by the GME Trainee is deemed potentially detrimental to University of Virginia Health System operations, including, but not limited to, jeopardizing patient safety or quality of patient care, suspension or loss of licensure, or debarment from participation as a provider of services to Medicare and other federal programs' patients. Unless otherwise directed, a GME Trainee suspended from *clinical activities* may participate in non-clinical program activities (e.g., educational conferences).

A decision involving suspension of a GME Trainee's clinical activities must be reviewed within three (3) calendar days by the department chair (or his or her

designee, e.g., Division Chief) to determine whether the GME Trainee may return to clinical activities and/or whether further action is warranted (including, but not limited to, counseling, remediation, fitness for duty evaluation, or summary dismissal). If the department chair initiates the suspension, the decision must be reviewed by the DIO.

B. Non-promotion: Refer to the GME Policy 05: Performance Assessment of GME Trainees.

C. Non –renewal of Appointment: Refer to the GME Policy 04: Non-Renewal of GME Trainees' Appointment.

D. Summary Suspension

A GME Trainee may be immediately suspended from clinical duties and all program activities by his or her program director, department chair, or DIO when 1) a GME Trainee demonstrates grossly unprofessional conduct, serious acts of incompetence, impairment, or falsified information; 2) a GME Trainee engages in criminal acts; 3) a GME Trainee is found noncompliant with University or Health System or Medical Center policies and/or federal health care program requirements ; 4) a GME Trainee becomes a threat to the safety and well-being of patients, other GME Trainees, faculty, other health care team members, or any other learners in clinical learning environments; or 5) GME Trainee is discovered to have been convicted of a crime related to the provision of health care items or services for which one may be excluded under 42 USC 1320a-7(a) (an "excludable crime" such as criminal offenses related to governmentally financed health care programs, including health care fraud, criminal abuse or neglect of patients, and/or felony controlled substance convictions related to the provision of health care).

A decision involving summary suspension from clinical duties and all program activities of a GME Trainee must be reviewed within three (3) calendar days by the department chair (or his or her designee) to determine whether the GME Trainee may return to some or all program activities and duties and/or whether further action is warranted (including, but not limited to, career or academic advising, remediation, fitness for duty evaluation, or dismissal). Summary suspension may be with or without pay at the discretion of the DIO.

E. Dismissal

A GME Trainee may be dismissed by the program director, department chair, or the DIO 1) at any time during or at the conclusion of remediation (See GME Policy 05: Performance Assessment of GME Trainees) or 2) at the end of suspension period.

The GME Trainee must be notified in writing of the reason for dismissal and have an opportunity to respond to the action within 3 calendar days of notification before the dismissal is effective, and receive a copy of the GME Appeal Process described in this policy. The DIO and Department Chair (or designee) must also be notified of such action.

2. GME APPEAL PROCESS

A GME Trainee may appeal suspension, non-promotion, non-renewal of appointment, or dismissal as follows. Any questions about appealability shall be directed to the DIO.

A. GMEC Appeal

A GME Trainee may initiate an appeal by submitting a written notice of appeal to the DIO, within thirty (30) calendar days of the date of notification of the appealable action (hereinafter "adverse action") which may be extended for good cause. The DIO will convene an appeal panel consisting of 3 faculty members outside of the trainee's Department. The GME Trainee may request one of the three members appointed by the DIO be replaced by another physician or a trainee at a same or a higher training level outside of the trainee's department. The GMEC appeal hearing will be held within thirty (30) calendar days following receipt of the notice of appeal. *A member of the GME Office must be present during this hearing.* The GME Trainee may have a faculty advocate appear and participate on the GME Trainee's behalf at the hearing. Prior to the hearing, the GME Trainee and program director must notify the chair of the appeal panel of the number of witnesses (if any) the GME Trainee expects to call and whether the GME Trainee will be accompanied by a faculty advocate and/or legal counsel.

At the appeal hearing, the program director (or designee) will present a statement in support of the adverse action and may present any relevant records, witnesses, or other evidence. The GME Trainee will have the right to present evidence (including the final summative evaluation), call and question witnesses, and make statements in defense of his or her position. Legal counsel may be present to provide advice and counsel to the GME Trainee, the Program, and the chair of appeal panel but counsel will not be permitted to actively participate in presentation of testimony, examination/cross-examination of witnesses, or oral arguments. Additionally, the GME office will hire a court reporter to record and transcribe the hearing. After presentation of evidence and arguments by both sides, the appeal panel will meet in closed session to consider the adverse action.

In its deliberations, the panel must accord deference to the recommendations of the Clinical Competency Committee. The panel's review shall be limited to: (a) compliance with applicable GME policies and procedures, and (b) whether there is sufficient evidence to support the recommendation of the program director or the Clinical Competency Committee in the instance of non-renewal, non-promotion, or dismissal for academic reasons.

The panel may uphold or reject the adverse action or may impose alternative actions, which may be more or less severe than the initial action. However, before rejecting the adverse action or imposing any alternative action, the panel must conclude that: (a) there was a failure to follow GME policies and that failure negatively affected the program's recommendation, and/or (b) that there is not substantial evidence to support the recommendation. The panel's decision must be submitted to the GME Trainee, the program director, chair of the department, and chair of the Clinical Competency Committee within ten (10) calendar days of the close of the hearing and copied to the DIO and the GME Office.

B. Appeal to the DIO

Either party may appeal the panel's decision to the DIO. The GME Trainee or program director must deliver a written appeal to the DIO within ten (10) calendar days of receipt of the notification of the action of the appeal panel. Either party must state as clearly and as fully as possible the reasons for seeking modification of the decision. The DIO will review the GME Trainee's training file, evidence presented during the appeal hearing, and any other relevant materials. The DIO will review the record submitted during the course of the appeal and may consider any other written material or oral testimony he or she deems relevant. The DIO's responsibilities are to:

- 1) Determine whether applicable University, department, and/or Medical Center policies were fairly and appropriately applied, and
- 2) Determine whether there is sufficient evidence to support the decision of the appeal panel. The DIO may uphold or reject the adverse action, may uphold or reject the decision of the appeal panel. The decision of the DIO will be submitted to the graduate medical trainee, the program director, Clinical Competency Committee Chair and the department chair within thirty (30) calendar days of the notice of appeal to the DIO. The decision of the DIO will be final within the University of Virginia.
- 3) If the DIO has a conflict, these responsibilities would fall to the Associate DIO; if both have a conflict, this responsibility would fall to the Vice-Chair of the GMEC.

3. OTHER CONSIDERATIONS

Documentation of the entire appeal will be maintained by the GME Office and becomes a part of the GME Trainee's permanent record.

External rules, regulations, or law governs mandatory reporting of problematic behavior or performance to licensing agencies or professional boards. The fact that such a report is made is not a matter which may give rise to the appeal process; only the adverse action as specified by this section is appealable. The reporting of an Adverse Action shall not be made the subject of an appeal. GME Trainees shall be aware that participation in the GME appeal process does not preclude investigation or action on the part of external entities.

GMEC Policy Subcommittee Reviewed/Revised: January 12, February 9, March 8, & April 12, 2016

GMEC Revised/Approved: January 18, 2018

GMEC Policy Subcommittee Reviewed/Revised: February 9, 2021

GMEC Reviewed/Approved: February 17, 2021